

247-255) is misleading, speculative and baseless. TBF's accusations of dishonesty reflect negatively on it because they are so specious.

190. TBF starts off its attack with a wholly sophistic attack arguing that David Gardner admitted in an earlier declaration that he did not visit the sites. TBF Findings ¶¶338, 352, Pp. 247, 255. This argument is totally baseless. David Gardner did not say that the statement only referred to the engineer's visit, he said, "that statement refers to the engineer's visit to the sites." He then refers to the fact that "I have seen both sites." TBF Ex. 246, P. 3. How could he have seen the sites without visiting them? Moreover, TBF ignores the plain language of the sentence, which refers to two different people: "a representative of Raystay", and an engineer. Moreover, the argument that a fact was not disclosed in opposing a petition to enlarge issues shows that the fact is not true has already been rejected by the Presiding Judge. Tr. 5432-5433.

191. TBF next argues that any observations David Gardner made were so cursory that the statement cannot be considered true. TBF Findings, ¶¶339-343, Pp. 247-250. TBF can only make that claim by understating what he did. See Glendale Findings, ¶¶379-381 Pp. 202-204 for an accurate summary of what David Gardner did. Moreover, TBF offers no specific suggestions for what David Gardner should have done that he

did not do. Even if there were additional things David Gardner could have done that he did not do, that does not show that he did not visit the sites or evaluate them. While TBF has not established that David Gardner should have done a better job in evaluating the sites, the statement would be true even if TBF was right.

192. Next, TBF argues that David Gardner's testimony as to when he visited the sites is not credible and claims that none of his visits took place while the construction permits were outstanding. TBF Findings, ¶¶344-351, Pp. 250-255. It argues that the record shows the first visit took place around the time the original applications were filed and that his purported reason for making the second set of visits is not credible. Neither argument is credible.

193. The testimony at Tr. 4768 is very tentative and does not provide a clear basis for finding that the first visits were in early 1989. While David Gardner expressed a belief that the visits may have been around the time the applications were filed, he testified three times that he was uncertain as to the specific timing of the visits. In contrast, his testimony at Tr. 4889-4890 that the first visits took place in the period between July to December 1990 is more certain.¹⁶ Even if it is concluded that the visits took place

¹⁶ TBF's snide suggestion that Gardner was lying because he gave two different responses (TBF Findings, P. 251 n.68) must be rejected. The mere existence of a discrepancy does

in 1989, TBF's claim that it is "obvious" that the visits had nothing to do with construction (§345, P. 251) is illogical. Where is it written that an applicant would never look at its proposed site and evaluate it before a construction permit is issued? In any event, the logical action to take is to rely on David Gardner's more certain testimony that the first visits took place in late 1990.

194. With respect to the second visits, TBF argues that David Gardner did not make those visits because his "professed reason for making the alleged second trip to Lancaster and Lebanon is patently contrived." TBF Findings, §348, P. 252. It is TBF's argument that is "patently contrived" as well as patent speculation. First of all, TBF invents another nonexistent discrepancy in his testimony. It claims that he first could not recall whether the visit took place after 1991, and then accuses him of trying "to improve" his testimony. TBF Findings, §346 and n.69, P. 252. The

not show deceptive intent, especially since David Gardner's initial testimony was, on its face, tentative and uncertain. TBF's repeated use of innuendo and speculation to "prove" deceptive intent only shows how weak its arguments are. David Gardner was subjected to three days of cross-examination where opposing counsel repeatedly engaged in game playing (see, e.g., Tr. 4837-4838), made baseless accusations that David Gardner was lying (Tr. 4697-4700), and invented inconsistencies between his deposition testimony and his hearing testimony that did not exist (see, e.g., Tr. 4826-4827). A fair review of his testimony shows that he made a good faith attempt to answer each question honestly under very difficult circumstances.

testimony is totally consistent. At Tr. 4801, David Gardner answered:

I don't recall the exact time of the visit. I just know that it was after Tom Riley visited it, but before there was snow on the ground that stayed.

At Tr. 4890, he testified:

Second visit would have been after Tom Riley's visit which was in October of 1991, but again, before there was snow on the ground. So, so, I would expect it would have been October, November, December of 1991.

Since the latter answer does not give an exact time, the two answers are consistent. Moreover, TBF's speculation is directly contrary to its own argument sixteen pages later:

Gardner testified that "it's possible" he visited the Lancaster site during that period, but he does not know... This testimony is not credible, for there is no plausible reason (and Gardner offers none) why he would have gone to the Lancaster site for such a nonproductive purpose during January-July 1992.

TBF Findings, P. 269 n.79. In other words, TBF argues at one point that David Gardner had to have visited after December 1991¹⁷, but then directly contradicts itself sixteen pages

¹⁷ Since David Gardner testified that the visit took place before there was permanent snow cover, the visit had to have taken place before the middle of the winter of 1992.

later. In any event, David Gardner definitively testified at Tr. 4922 that his visits took place "prior to the first filing."

195. David Gardner's reason for making the second visits was to review the Lancaster site because he wanted to be able to talk as intelligently as he could if Trinity was going to try and back out of any potential deal. Tr. 4801-4802. He decided to visit the Lebanon site again to look at it since he was going to Lancaster anyway. Tr. 4801. TBF argues that this testimony is not credible because Trinity continued to negotiate with Raystay and because it is allegedly not plausible that David Gardner would go out of his way to visit the Lebanon site. TBF Findings, ¶¶348-350, Pp. 252-254. This argument is the rankest sort of speculation. Moreover, it misstates the nature of David Gardner's concerns.

196. Glendale must first point out that TBF's proposed finding that David Gardner did not discuss the dust problem with Mr. Sandifer (¶349, P. 253) is wrong. David Gardner believes he did discuss the matter with Mr. Sandifer. Tr. 4805-4806. Mr. Sandifer did not say he had no discussion but that he had no recollection of such a discussion. Tr. 5117-5118.

197. In connection with his work on the draft purchase agreements sent by Trinity, David Gardner made clear his concern that Trinity would try and back out of a deal after

agreements were signed. At Tr. 4655, he testified (emphasis added):

A. I would characterize it more as not recommending that Raystay not take any financial burden to show that. In other words, what Trinity was trying to do was to change the terms of the deal if they didn't like something that they received after the deal went through and I wanted Trinity to look at the deal, say yes to the deal, and say, "Here's the check," and there'd be no further discussion about it or reject the deal without signing it...

A. No. Trinity was asking for the right to cancel the deal entirely if they decided that they didn't like it after they signed off on it.

Under Section 2(c) of TBF's standard LPTV purchase agreement, if TBF determined in its sole discretion that the site was unsuitable or unusable, TBF had the unilateral right to either reduce the purchase price to one-third of the negotiated price or to cancel the agreement. TBF Ex. 122, Pp. 10-11. The fact that Trinity was continuing to send paperwork to Raystay did nothing to alleviate David Gardner's concern that Trinity would decide it wanted out of the deal after the agreements were signed. Moreover, David Gardner did not recall any discussions with anyone from Trinity concerning the adequacy of the sites (Tr. 4802), so he had no basis for believing that the Lancaster site was acceptable to Trinity. TBF's argument is not only rank speculation but contrary to the facts.

198. TBF's argument that David Gardner would not have gone out of his way to visit the Lebanon site while he was visiting Lancaster (§350, P. 254) is just more rank speculation. Lebanon is much closer to Lancaster than it is to Carlisle, and there is a direct route between Lancaster and Lebanon (Route 72). See TBF Ex. 266. The argument is ridiculous on its face. TBF cannot point to one shred of evidence that casts doubt on David Gardner's testimony. Its arguments misstate the record and substitute distortions and speculation for evidence.

3. Discussions With Cable Operators

199. TBF next attacks the following statement concerning discussions with cable operators:

It [Raystay] has also had continuing negotiations with local cable television franchises to ascertain what type of programming would enable the station to be carried on local cable systems.

TBF Findings, §§354-363, Pp. 256-261. In actuality, TBF readily admits that Raystay had discussions with cable operators, and the dispute only relates to the one word "continuing". TBF's own findings demonstrate that there was no misrepresentation in this statement. Moreover, the record shows that the use of the word "continuing" was appropriate.

200. Many of the arguments TBF makes have already been answered in Glendale's proposed findings and conclusions. See

Glendale Findings, ¶¶387-390, Pp. 206-209, Glendale Conclusions, ¶¶654-655, Pp. 380-382. For example, TBF fails to note that one of the ways in which the discussions with cable operators were "continuing" was that:

I believe that the discussions that Raystay had had in late-1990 and 1991 would have -- were continuing discussions and that those discussions were still open when Raystay could have a -- could find a program service that the cable system operators would find attractive.

Tr. 4931. TBF does not even address this testimony, and there is nothing inherently unreasonable in using the term in the sense that the door was still open to discussions. If that use of the word "continuing" is acceptable, TBF's other arguments are entirely moot.

201. Seen in that light, the argument over whether Mr. Etsell continued to talk to cable operators after the first quarter of 1991 is insignificant. In any event, TBF has failed to show that any of the people reviewing the extension applications (David Gardner, Lee Sandifer, and George Gardner) did not have a good faith belief that Mr. Etsell was continuing to talk to cable operators. See Glendale Findings, ¶390 Pp. 208-209, Glendale Conclusions, ¶655 Pp. 381-382. TBF's arguments to the contrary distort the record. First of all, Mr. Etsell's testimony is not as clear as TBF pretends it is. While it is true that Mr. Etsell did not recall any

discussions with cable operators in the first quarter of 1991, he left open the possibility that he did have some further discussions that he did not recall. TBF Ex. 265, P. 108. Second, Glendale must point out that there is no conflict between Mr. Etsell's recollection that he was taken off the LPTV project in early 1991 and George Gardner's testimony. George Gardner confirmed that Mr. Etsell was reassigned to other matters when the Fenstermacher agreements were signed. Tr. 5318-5319. The question is whether he was put back on the project after the Fenstermacher agreements were terminated. Third, contrary to the claim in ¶358 of TBF's findings (P. 259), the testimony of Mr. Sandifer and David Gardner support George Gardner's testimony. Both gentlemen understood that Mr. Etsell was talking to cable operators in late 1991 and early 1992. Tr. 4822-4823, 4931-4933, 4990-4991, 5121-5122. Fourth, the fact that Mr. Etsell was unaware of certain events concerning the permits does not contradict the idea that George Gardner wanted him to develop a business plan. The record shows that George Gardner never put one person in charge of all operations concerning LPTV. The only specific responsibility Mr. Etsell had with respect to the permits was the development of a business plan. Tr. 5323. While Mr. Etsell met with cable operators and worked on his business plan, Mr. Sandifer negotiated with Mr. Fenstermacher and with Mr. Grolman. George Gardner himself was primarily responsible

for choosing equipment. David Gardner had other responsibilities with respect to the permits. Moreover, the testimony cited by TBF (TBF Ex. 265, P. 109) demonstrates that Mr. Etsell was aware that Raystay had filed the December 1991 extension applications and received an extension.

202. The record does not allow an unambiguous finding to be made one way or the other as to whether Mr. Etsell had negotiations with cable operators in late 1991 and early 1992. While Mr. Etsell does not remember any such discussions, the people who reviewed the extension applications believed he had such discussions. Indeed, TBF implicitly admits in footnote 74 (P. 260) that it has failed to show any misrepresentation by arguing that Mr. Sandifer was confused when he believed that David Gardner and Mr. Etsell (Tr. 5161-5162) talked to cable operators at the Atlantic Cable Show in October 1991. While TBF has not in fact shown this to be the case, if the belief that Mr. Etsell was talking to cable operators was the result of confusion, there is no way any misrepresentation exists because confusion does not equal intent to deceive. As Glendale pointed out in ¶655 of its conclusions (Pp. 381-382), there are many possible explanations that are inconsistent with a misrepresentation, and TBF did not meet its burden of eliminating those explanations. TBF has absolutely no evidence that David Gardner, George Gardner, and Mr. Sandifer

did not believe Mr. Etsell was continuing to talk to cable operators.

203. Finally, another sense in which the discussions with cable operators were continuing in the July 1992 extension applications is that David Gardner and George Gardner had had discussions with cable operators since the filing of the December 1991 extension applications. TBF's attack on this testimony (§§360-361, Pp. 259-260) lacks credibility. The fact that David Gardner and George Gardner did not mention these contacts in their direct written testimony is absolutely irrelevant. Glendale had neither evidentiary burden. In essence, TBF is arguing the ridiculous principle that any helpful testimony that comes out on cross-examination and is not in direct written testimony may not be believed. Moreover, David Gardner's failure to recall this specific discussion at his deposition does not mean he did not have the discussion. The litigation of this issue has involved a tremendous number of details, and there is nothing incredible about the idea that David Gardner would remember a couple of additional details after his deposition. In short, the use of the word continuing in describing the discussions with cable operators was accurate in at least two instances, and everyone who reviewed Exhibit 1 believed it was true.

D. George Gardner's Responsibility for the Applications

204. As Glendale has shown in great detail here and in its proposed findings and conclusions, there was no misrepresentation or lack of candor in any of the extension applications. Thus, there is no basis for disqualifying Glendale, and there is no need to consider the question of George Gardner's state of mind and the relationship between Raystay and Glendale. If the Presiding Judge deems it necessary to reach that question, however, TBF's arguments on this point must be rejected. Indeed, TBF's arguments are sheer hypocrisy in light of the misconduct engaged in by Paul Crouch, TBF's President.

1. George Gardner's Intent

205. TBF's first argument is that George Gardner allegedly knew that the extension applications "conveyed a materially false impression" to the Commission. TBF Findings, ¶¶383-387 Pp. 272-274, TBF Conclusions, ¶¶708-710 Pp. 490-492. As Glendale has shown above, the idea that the extension applications conveyed a "materially false impression" is baseless and is not responsive to the issue, which seeks to determine whether any misrepresentation or lack of candor exists. TBF's argument is based upon such bogus "facts" as that George Gardner had given up hope of constructing the stations and that Raystay was barred by Greyhound from constructing the stations in 1991. George Gardner had

personal knowledge that most of the statements in Exhibit 1 were correct, and he had a reasonable basis for accepting the two statements of which he did not have personal knowledge. Furthermore, he knew that counsel had worked on the application, and he never received any implicit or explicit notice that something else should be in the application. As he testified, Exhibit 1 disclosed the business plan. Under those circumstances, there is absolutely no basis for imputing any deceptive intent to George Gardner.

2. George Gardner's Review of the Applications

206. TBF's second argument is that even if George Gardner did not know statements in Exhibit 1 were false, he must be disqualified because he allegedly did not make sufficient efforts to ascertain the facts. TBF Conclusions, ¶¶711-714 Pp. 492-494. This argument is sheer, unadulterated hypocrisy. Paul Crouch, TBF's President, should be familiar with the responsibility to closely review and examine applications prior to signing them. In the early 1980s, the license of KTBN was almost taken away because of a blatant misrepresentation concerning ascertainment. See SALAD Ex. 35. Although it was Paul Crouch who signed the application in question and attested to its accuracy, it was found:

Crouch, who signed the Santa Ana application as President of International, acknowledged that his review of the application was cursory.

He could not recall reviewing each page. On February 8, 1978, Crouch signed the application without specifically focusing on the ascertainment portions. He relied upon Flynn to prepare the ascertainment and the other portions of the application. At the time of signing, he did not know of the misrepresentation.

SALAD Ex. 35, P. 11. Crouch's failure to adequately review the application was roundly criticized, but he was not disqualified because he was unaware of the misrepresentation:

The Review Board has made clear that a finding of misrepresentation requires falsity and evidence of an intention and a motive to deceive, mislead or conceal...[citations omitted] Crouch, the individual who executed the application, was unaware that the application contained any inaccuracies or untruths. As a consequence, Crouch is innocent of any misrepresentation or wrongdoing. What he is guilty of is a total delegation of functions to Flynn and, as a result, an abdication of the responsibility to have assured himself that all of the representations in the application were true and correct. Were this still a comparative proceeding, a substantial demerit would be assessed against International. However, as noted, supra, International is the sole applicant and it is concluded, as urged by International and the Bureau, that the facts do not warrant disqualification.

SALAD Ex. 35, P. 21. In other words, while Paul Crouch grossly failed to meet his responsibility to assure the accuracy of applications he signed, that failure did not equate with misrepresentation on his part.

207. The record in this proceeding demonstrates that Paul Crouch is continuing to flout his responsibility to read and to closely review applications he signs. While he signed applications filed by NMTV to acquire stations in Odessa, Texas, and Portland, Oregon, he at most "flipped through" those applications before signing them. Tr. 2699, 2749. Both applications contained a series of material inaccuracies and omissions. See Glendale Findings, ¶¶72-74, 112, Pp. 45-46, 67-68.

208. George Gardner did much more than Paul Crouch did to ensure the accuracy of the applications he signed. Unlike Paul Crouch, George Gardner read each and every sentence of the exhibit attached to the application. Tr. 5246. He carefully reviewed the applications. Tr. 5245. The argument that "He made not the slightest effort to verify what he was signing" (TBF Conclusions, ¶712 P. 493) is sheer nonsense. He verified the application by reading it. TBF ignores the elementary point that George Gardner had personal knowledge that most of the statements in the application were true. See Glendale Ex. 208, Pp. 3-6. Moreover, George Gardner had more than his own review to rely upon. He knew as a matter of practice that counsel had prepared the application, and he also knew that David Gardner and Mr. Sandifer (for the first set of extension applications) had reviewed and approved the application before he did. George Gardner wanted as many

knowledgeable people as possible to review an application to ensure its accuracy. Tr. 5252-5253. While it is true that George Gardner did not discuss the application with David Gardner or Lee Sandifer before he signed it, they had already manifested their belief in the accuracy of the application by reviewing it and passing it on. George Gardner made clear that if he had any questions or seen any potential problems, he "would have immediately talked with David Gardner on it." Tr. 5252.

209. Under those circumstances, it is utterly specious for TBF to argue that George Gardner must be disqualified even if he did not know any statement was false. The Commission's definition of misrepresentation and lack of candor requires an intent to deceive. Fox River Broadcasting, Inc., supra. TBF's attempt to equate "gross carelessness" with intent to deceive (TBF Findings, ¶¶713-714 Pp. 493-494) is ridiculous on its face. The argument applies with far more force to Paul Crouch, who just "flipped through" applications containing material errors after he was put on specific notice that he needed to pay more attention to applications. George Gardner was not careless by any stretch of the imagination: he read the exhibit and had personal knowledge of most of the statements in there. He also had several other people review and approve the exhibit for accuracy. This argument is frivolous.

3. George Gardner's Accountability for the Actions of his Subordinates

210. TBF's final argument is that Glendale must be disqualified because a corporation is responsible for the FCC-related misconduct of its employees. TBF Conclusions, ¶¶715-716 Pp. 495-496. While that general principle is correct, it does not mean that Glendale can be disqualified in the absence of any intent to deceive by George Gardner. Paul Crouch was fully responsible for the misrepresentation made by his subordinate Flynn (and adopted by Crouch), but that responsibility did not equate with intent to deceive by Crouch or require disqualification. Moreover, TBF ignores the fact that it is Glendale's qualifications that are at issue, not Raystay's qualifications. There is no connection between David Gardner, Lee Sandifer, Harold Etsell and Glendale. If one assumes for purposes of argument¹⁸ that one of those individuals engaged in misconduct, that conclusion would be irrelevant to Glendale's qualifications. The Bureau recognizes that principle when it concludes that Glendale cannot be disqualified because George Gardner had no involvement in the alleged misconduct (which in fact does not

¹⁸ Glendale does not concede that there was any misconduct by any of these individuals.

exist) concerning the Red Lion assignment application. Bureau Conclusions, ¶348 P. 181.¹⁹

211. The Commission's decision in Faulkner Radio, Inc., 88 FCC 2d 612, 616, 50 RR 2d 814, 818 (1981) demonstrates that there is a fundamental distinction between a hearing where the misconduct occurred at the station whose qualifications were at issue and a hearing where the qualifications of a different station or entity are at issue. In deciding the effect of misconduct in one context on the ability to hold other licenses, the personal responsibility of the licensee's principals is an important factor to consider. Id. Indeed, the Commission granted the renewal applications of a licensee who had engaged in misconduct at one station in large part because there was no personal involvement of the controlling stockholder. The Commission also noted that when the misconduct occurred at the station whose qualifications are being considered, the personal responsibility of principals is not important:

¹⁹ The Bureau offers no coherent distinction between the two issues to justify the different results. It does not allege that George Gardner knew the statements in the extension applications were false but merely points to the fact that George Gardner reviewed and signed the extension applications. Bureau Conclusions, ¶340 P. 175. As Glendale has already shown, however, the fact that he reviewed and signed the applications does not mean he knew that any statements were false or that disqualification is appropriate. See SALAD Ex. 35.

This consideration carries little weight with respect to a station immediately involved in misconduct. Otherwise a corporation could easily insulate itself from all responsibility as a licensee.

88 FCC 2d at 617 n.20, 50 RR 2d at 818 n.20. While TBF cites the earlier decision involving the license of the station where the misconduct occurred (TBF Conclusions, ¶715 P. 495, citing Radio Carrolton, 69 FCC 2d 1141-44 [sic] (1978)), it fails to cite the applicable order in that proceeding.

212. TBF's citation of United Broadcasting of Florida, Inc., 60 FCC 2d 816, 817 (1976) is also ironic because the Commission later renewed the licenses of United's other stations, even when additional misconduct had occurred at one of the stations whose licenses were later challenged. See, e.g., United Broadcasting Co., Inc., 100 FCC 2d 1574, 57 RR 2d 885 (1985). Again, the history of the United cases undercuts TBF's argument that misconduct at one station must automatically be imputed to another station with common principals. In Continental Broadcasting, Inc., 17 FCC 2d 485, 16 RR 2d 30 (1969), the misconduct in question occurred at the station whose qualifications were being reviewed. Finally, a reading of Prattville Broadcasting Co., 4 FCC 2d 555, 558-562, 8 RR 2d 120, 125-128 (Rev. Bd. 1966) shows that one of the applicant's partners knew he was submitting falsified program logs.

213. Since there was no misconduct by George Gardner, the fact that he was under heightened scrutiny is irrelevant. TBF argues that the prior decision involving George Gardner is an "aggravating circumstance" (TBF Conclusions, ¶¶717-723 Pp. 496-500). Since there is no evidence that George Gardner intended to deceive the Commission, there is no misconduct for which to take any "aggravating circumstances" into account. The Commission already has held that the prior adjudication in the Fort Lauderdale proceeding is not an independent basis for disqualifying Glendale. See Memorandum Opinion and Order, FCC 93M-469 (released July 15, 1993) at ¶¶8-13. Since there is no misconduct of George Gardner to "aggravate", the prior ruling is irrelevant.

214. Clearly, there is no legitimate basis for disqualifying Glendale in the absence of any basis that George Gardner acted with an intent to deceive the Commission. While nobody affiliated with Raystay attempted to deceive the Commission, any problems with the extension applications were not caused by any malicious intent on the part of George Gardner. In contrast, TBF directors and officers had extensive personal involvement in the misconduct and deception chronicled in the record on the qualifications issues specified against TBF. The issue must be resolved in Glendale's favor.

III. RENEWAL EXPECTANCY

A. Introduction

215. In its proposed findings and conclusions, TBF argues that it is entitled to a substantial renewal expectancy for its performance during the last renewal period. TBF Findings, ¶¶439-589 Pp. 305-389, TBF Conclusions, ¶¶743-786 Pp. 514-543. The Bureau concludes that although TBF's directors engaged in serious misconduct during the renewal period, "TBF is still entitled to a renewal expectancy, however minimal." Bureau Conclusions, ¶319 Pp. 164-165. In fact, Glendale demonstrated in its proposed findings and conclusions that even if TBF is qualified to remain a Commission licensee (which it is not), TBF cannot be awarded any renewal expectancy because of the many defects in its service record along with the serious record of misconduct and deception developed under the qualifications issues specified against TBF in this proceeding. Glendale Findings, ¶¶420-559, Pp. 222-298, Glendale Conclusions, ¶¶671-702 Pp. 392-411. The proposed findings and conclusions of TBF and the Bureau with respect to renewal expectancy may not be relied upon because they ignore the many defects in TBF's service record and either deny or understate the misconduct engaged in by TBF's officers and directors.

216. Glendale demonstrated many defects in its proposed findings and conclusions which are not even addressed in the

TBF or Bureau documents. With respect to ascertainment, Glendale demonstrated that TBF frequently made errors that resulted in it failing to recognize what the top community issues were. Glendale Findings, ¶435 Pp. 232-239, Glendale Conclusions, ¶675 Pp. 395-396. It also showed that TBF's ascertainment process was too general and that as a result, TBF frequently dealt with topics that its own ascertainment showed were not important issues. For example, TBF offered many programs dealing with pornography as responsive to the issue of crime, but TBF's ascertainment tabulations usually showed that pornography was not an important community issue. Glendale Findings, ¶¶431, 490-491, Pp. 229, 269-270, Glendale Conclusions, ¶674 Pp. 394-395.

217. There were many problems with TBF's treatment of community issues in its programming. There were sixteen instances in which TBF offered no programming responsive to an issue that its ascertainment tabulations showed to be one of the top issues. Glendale Findings, ¶474 P. 260. There were fifteen other instances in which an issue was minimally treated by only one or two programs in a quarter. Glendale Findings, ¶¶475-485 Pp. 260-262. Although TBF's stated goal was to have four local programs on each top community issue in each quarter, it was more common for TBF to have no local programming on an issue in a quarter than to have four local programs per issue per quarter. Glendale Findings, ¶¶486-487

Pp. 262-264. Many of the programs relied upon by TBF were not responsive to the specific needs and interests of Miami for one of three reasons: (1) they related to programs or events elsewhere, (2) they related to matters which TBF's ascertainment showed to be unimportant, or (3) they dealt with personal religious experiences. Glendale Findings, ¶¶488-510 Pp. 264-276. TBF's allegations that there was a strong connection between ascertainment and programming do not withstand scrutiny because there were many periods in which local programs infrequently dealt with ascertained issues. Glendale Findings, ¶¶441, 446, Pp. 243-244, 246, Glendale Conclusions, ¶¶684-686 Pp. 400-403.

219. The findings of TBF and the Bureau concerning other renewal expectancy factors are also incomplete. Although TBF relies very heavily on public witness testimony, its heavy reliance is misguided because it ignores the testimony of SALAD's public witnesses opposing TBF, it fails to show that its public witnesses reflect a random cross-section of the community, and public witness testimony cannot make up for the many defects in its programming record. Glendale Conclusions, ¶¶688-690 Pp. 403-405. Indeed, there are many instances where TBF's own public witnesses contradict the station by claiming that a certain issue was important when TBF's own ascertainment showed otherwise. Glendale Findings, ¶¶523, 525, 530, 540, 545, 551 Pp. 280-281, 283-284, 289, 291, 293.

With respect to community involvement, TBF is not entitled to any meaningful credit for the Prayer Partner Line because that program is almost exclusively religious prayers and related activities. Glendale Findings, ¶¶518-522 Pp. 278-280, Glendale Conclusions, ¶¶693 Pp. 406-407. Finally, TBF's claim that there is no record evidence of any FCC rule or policy violation that diminishes any renewal expectancy (TBF Conclusions, ¶770 Pp. 533-534) cannot be taken seriously. While the Bureau correctly takes the misconduct by TBF's directors and officers into account in the renewal expectancy analysis, Glendale has shown in section I of this reply that the Bureau significantly understates the pervasiveness of the misconduct and ignores the many instances where TBF's principals have attempted to mislead the Commission.

219. Glendale believes the record in this proceeding requires TBF's outright disqualification. If the Presiding Judge deems it necessary to make a comparative analysis, however, TBF cannot receive any renewal expectancy. If, as the Bureau argues, the misconduct was serious enough to reduce any renewal expectancy to "minimal", any renewal expectancy must be eliminated once the Presiding Judge takes into account the many defects in TBF's record of service and the full nature of the misconduct in question. Since TBF and the Bureau ignore the defects in TBF's service record, no purpose would be served in having Glendale repeat all of its findings

detailing those defects. Instead, Glendale will refer the Presiding Judge to its proposed findings and conclusions and comment briefly on those portions of the TBF and Bureau pleadings which require further comment.

B. Children's Programming

220. TBF claims renewal expectancy credit for the network children's programming carried on WHFT(TV) during the renewal period. It claims that "children require programming designed specifically for them" and that its children's programming was strictly educational, informational, and moral. TBF Conclusions, ¶¶762-764 Pp. 528-530. TBF's argument must be rejected for several reasons. It has not shown that its children's programming was in response to the ascertained needs and interests of the children in the WHFT service area. Contrary, to its claim, most of the children's programming was entertainment programming which is not relevant to a renewal expectancy showing. Finally, TBF's attempt to claim credit for conveying religious or moral values cannot be accepted because it would put the Commission in the inappropriate position of judging the morality of programming.

221. TBF does not cite one case where the type of children's programming it offered was considered relevant to renewal expectancy. The type of programming that is relevant is programming designed to meet the ascertained needs of the